



**BOULT - CUMMINGS®**  
**CONNERS - BERRY PLC**

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*Via Federal Express*

August 28, 2008

Steven M. Saxe, FACHE  
Director  
Health Professions and Facilities  
Department of Health  
310 Israel Road SE  
Tumwater, WA 98501

**RECEIVED**

**AUG 29 2008**

**CERTIFICATE OF NEED PROGRAM  
DEPARTMENT OF HEALTH**

Re: HC08-01 – Empire/CHS Conversion Applications  
CN08-35 – CHS Purchase of Deaconess-Certificate of Need Application  
CN08-36 – CHS Purchase of Valley Hospital & Medical Center – Certificate of  
Need Application

Dear Mr. Saxe:

I am writing in response to your letter dated August 20, 2008 in which the Department of Health of the State of Washington (the "Department") issued its conditional approval of each of the above-referenced applications. Please allow this letter to serve as the response to each such proposed condition, submitted on behalf of Spokane Washington Hospital Company, LLC ("Deaconess Buyer") and Spokane Valley Washington Hospital Company, LLC ("Valley Buyer") (Deaconess Buyer and Valley Buyer being collectively referred to herein as the "Applicants").

Please note that the numbered responses set forth below correspond to the numbered conditions included in your letter dated August 20, 2008, a copy of which is attached hereto as Exhibit A.

**DEACONESS MEDICAL CENTER CERTIFICATE OF NEED CONDITIONS**

Deaconess Buyer agrees to each of the conditions (1 – 4) required by the Department.

**VALLEY HOSPITAL & MEDICAL CENTER CERTIFICATE OF NEED CONDITIONS**

Valley Buyer agrees to each of the conditions (1 – 4) required by the Department.

**DEACONESS MEDICAL CENTER AND VALLEY HOSPITAL & MEDICAL CENTER  
CONVERSION CONDITIONS**

1. The Applicants agree to this condition.
2. The Applicants agree to this condition.
3. The Applicants agree to this condition.
4. The Applicants agree to this condition. Accordingly, the Applicants will provide such reports as the Department deems necessary to assure compliance with the provisions of RCW 70.45 and the conditions set forth in the Department's decision on the application.
5. This condition does not apply to the Applicants. It is our understanding that counsel to Empire Health Services ("Seller") will respond directly to the Department regarding this condition.
6. This condition does not apply to the Applicants. It is our understanding that counsel to Seller will respond directly to the Department regarding this condition.
7. This condition does not apply to the Applicants. It is our understanding that counsel to Seller will respond separately to this condition. However, please note that the Applicants anticipate that the net proceeds of the sale directly to the new foundation at the closing, thus eliminating the need for the transfer to a trust account for an interim period following closing.
8. The Applicants agree to this condition.
9. This condition does not apply to the Applicants. It is our understanding that counsel to Seller will respond directly to the Department regarding this condition.
10. The Applicants agree to amend Schedule 9 to the Asset Purchase Agreement; however, the amendment to Schedule 9 recommended by the Attorney General Opinion could permit the new Foundation to directly fund the operations of competitors of the hospitals post-closing. Therefore, the Applicants propose as an alternative that the Department accept the revised Schedule 9 attached hereto as Exhibit B. For your convenience, we have included a "red-lined" version of the revised Schedule 9, marked to show changes against the original version submitted during the application review process.
11. The Applicants agree to this condition.
12. The Applicants agree to this condition.

Steven M. Saxe, FACHE  
August 28, 2008  
Page 3

13. This condition does not apply to the Applicants. It is our understanding that counsel to Seller will respond directly to the Department regarding this condition.

14. The Applicants agree to this condition.

15. The Applicants agree to this condition.

Thank you for your continued attention to the applications referenced herein. Please contact me directly if you should have any questions or require any additional information.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Andrew J. Murray

Enclosures

cc: Kenneth D. Hawkins  
William S. Hussey  
John F. Sullivan, Esq.  
Keith R. Anderson, Esq.  
Kelley Taylor Hearne, Esq.

**EXHIBIT A**

**Letter from the Department of Health dated August 20, 2008**

Please see attached.



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

August 20, 2008

CERTIFIED MAIL # 7007 2560 0000 4822 1590

Kenneth D Hawkins  
Community Health Systems  
Post Office Box 689020  
4000 Meridian Boulevard  
Franklin, Tennessee 37067

RE: HC 08-01 Empire/CHS Conversion Applications  
CN08-35 CHS Purchase of Deaconess-Certificate of Need Application  
CN08-36 CHS Purchase of Valley Hospital & Medical Center-Certificate of Need Application

Dear Mr. Hawkins:

We have completed review of the applications identified above submitted by Community Health Systems. These applications address the purchase of Deaconess Medical Center and Valley Hospital and Medical Center. Enclosed are the written evaluations. The department has concluded that these applications can be approved pending agreement to the following conditions.

**DEACONESS MEDICAL CENTER CERTIFICATE OF NEED CONDITIONS**

1. Within 45 days of finalizing the purchase of Deaconess Medical Center, Community Health System, Inc. will submit to the Certificate of Need Program for review and approval a final, executed Admission Policy. The final Admission Policy will be consistent with the draft policy provided in the application.
2. Within 60 days of finalizing the purchase of Deaconess Medical Center, Community Health System, Inc. will submit to the Certificate of Need Program an executed copy of a Department of Health's Hospital and Patient Data Systems program, approved Charity Care Policy.
3. Deaconess Medical Center will provide charity care in compliance with the charity care policies provided in this Certificate of Need application, or any subsequent policies reviewed and approved by the Department of Health. Deaconess Medical Center will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount

of charity care provided by hospitals in the Eastern Washington Region. Currently, this amount is 3.35% of adjusted revenue. Deaconess Medical Center will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies.

4. Community Health System, Inc. cites the following items as essential services for Deaconess Medical Center. These services will remain available at the hospital for a minimum of ten years.

24-Hour Emergency Care	Labor & Delivery
Cardiac Catheterization	Neonatal Intensive Care
Cardiovascular Surgery & CT Scanning	Mammography
Diagnostic Radiology	MRI Services
General Surgery	Nuclear Medicine
Inpatient Medical & Surgical Services	Outpatient Surgery
Intensive Care	Pharmacy
Lab Services	Therapy Services

If Community Health System determines that any of the listed essential services are to be discontinued, Community Health System will submit an amendment application, with all appropriate supporting documentation to modify this condition as required by (WAC 246-310-570(1)(d)).

#### **VALLEY HOSPITAL & MEDICAL CENTER CERTIFICATE OF NEED CONDITIONS**

1. Within 45 days of finalizing the purchase of Valley Hospital and Medical Center, Community Health System, Inc. will submit to the Certificate of Need Program for review and approval a final, executed Admission Policy. The final Admission Policy will be consistent with the draft policy provided in the application.
2. Within 60 days of finalizing the purchase of Valley Hospital and Medical Center, Community Health System, Inc. will submit to the Certificate of Need Program an executed copy of a Department of Health's Hospital and Patient Data Systems program, approved Charity Care Policy.
3. Valley Hospital and Medical Center will provide charity care in compliance with the charity care policies provided in this Certificate of Need application, or any subsequent policies reviewed and approved by the Department of Health. Valley Hospital and Medical Center will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in the Eastern Washington Region. Currently, this amount is 3.35% of adjusted revenue. Valley Hospital and Medical Center will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies.

4. Community Health System, Inc. cites the following items as essential services for Valley Hospital and Medical Center. These services will remain available at the hospital for a minimum of ten years.

24-Hour Emergency Care	Mammography
Diagnostic Radiology	MRI Services
General Surgery	Nuclear Medicine
Inpatient Medical & Surgical Services	Outpatient Surgery
Intensive Care	Pharmacy
Lab Services	Therapy Services
Labor & Delivery	

If Community Health System determines that any of the listed essential services are to be discontinued, Community Health System will submit an application, with all appropriate supporting documentation to modify the issued Certificate of Need.

#### **DEACONESS MEDICAL CENTER AND VALLEY HOSPITAL & MEDICAL CENTER CONVERSION CONDITIONS**

1. These approvals are based on the department's record and the representations made to the department and AGO throughout the review of these Conversion and Certificate of Need applications.
2. Prior to the closing of the transaction no material changes are made to the Application, the Asset Purchase Agreement, or the new foundation's Articles of Incorporation and Bylaws except as may be necessary to comply with conditions identified.
3. Prior to the closing of the transaction there occur no changes in operations at the Hospitals, or other events, which result in Empire Health Services not receiving fair market value for the Hospitals.
4. CHS, Empire, and the new foundation each shall provide to DOH, initially within 120 days after the closing of the acquisition and annually thereafter, such reports as DOH deems necessary to assure compliance with the provisions of RCW 70.45 and any conditions imposed pursuant to RCW 70.45.060(2). This should include but not be limited to, financial reports and accountings of the new foundation's operations, income, expenses and grants. These reports shall be available to the public.
5. The new foundation's Articles and Bylaws shall be filed with the Secretary of State's office no later than 120 days following approval of the acquisition
6. The net proceeds from the sale of Deaconess Medical Center and Valley Hospital and Medical Center shall be dedicated to the permissible health care-related purposes for the benefit of the communities within the region served by both hospitals. The new foundation

shall provide to DOH annually, such financial reports, either discretely or as a part of any other reports that demonstrate compliance with this condition.

7. Upon closing the net proceeds of the sale shall be immediately transferred and held in an interest bearing trust account for the benefit of the new foundation until such time as the initial members of the new foundation's board of directors have been appointed. The financial institution in which such account is established shall be subject to DOH's approval. The principal and interest in such trust account shall be transferred to the new foundation immediately following the appointment of the initial members of the new foundation's board of directors.
8. The post-transaction Empire bylaws must be amended to include the requirement, set forth elsewhere in the application, that one of the Empire directors be selected from among three nominees of the new Foundation (*see* page 11, AG Opinion).
9. The draft bylaws for the new Foundation must be amended to strike the requirement that when the initial board members select "a full roster of directors" within 90 days after the closing of the transaction, that their choice be limited to a slate of nominees put forward by post-transaction Empire (*see* page 47 AG Opinion);
10. Schedule 9, attached to the Asset Purchase Agreement, must be amended to remove the prohibition against the new Foundation carrying out its charitable purpose through the support of hospitals that compete with CHS. (*see* pages 49-53 AG Opinion);
11. The draft Foundation Agreement must be amended to explicitly state that the new Foundation holds assets distributed to it pursuant to this transaction in charitable trust (*see* page 45 AG Opinion);
12. The Asset Purchase Agreement must be amended to explicitly require, rather than merely permit, Empire to distribute the net purchase price to the new Foundation (*see* page 46 AG Opinion);
13. Two additional nominees to serve as initial directors of the new Foundation must be identified to provide a more broadly diverse and representative board (*see* pages 54-55 AG Opinion).
14. If CHS fails to make its required \$100 million capital investment within five years of executing the Asset Purchase Agreement, CHS shall pay any shortfall to the new foundation. (*see* page 45, AG Opinion)
15. Deaconess Medical Center and Valley Hospital and Medical Center will provide charity care in compliance with the charity care policies provided in its Certificate of Need applications, or any subsequent policies reviewed and approved by the Department of Health. Deaconess and Valley will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in the Eastern Washington Region. Currently, this amount is 3.35% of adjusted revenue. Deaconess and Valley will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies.



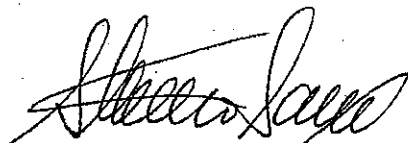
Please notify the Department of Health within 20 days whether you agree to the terms attached to this approval. The Certificate of Need Program does not accept faxed responses to correspondence. Your responses should be sent to the Program at one of the addresses below.

Mailing Address:  
Mail Stop 47852  
Olympia, WA 98504-7852

FedEx and UPS:  
310 Israel Road SE  
Turnwater, WA 98501

Thank you for your cooperation during the review of the application. If you have any questions, please contact Janis Sigman of the Facility Certification Program at (360) 236-2955.

Sincerely,



Steven M. Saxe, FACHE  
Director, Health Professions and Facilities

cc: Jeffrey Even, Deputy Solicitor General  
Robert Fallis, AAG  
Johnna Skyles Craig, AAG

Enclosures

**EXHIBIT B**

**Revised Schedule 9 to the Asset Purchase Agreement**

Please see attached.

## Schedule 9

### Exceptions to Non-Compete

Notwithstanding the covenant not to compete set forth in Section 9 of this Agreement, and notwithstanding any other term, condition or provision of such Agreement, Seller and/or its successors in interest (including without limitation the Foundation) shall be permitted at any time and from time to time to, directly or indirectly, in whole or in part, own, lease, manage, operate, control, participate in, fund or otherwise support or facilitate organizations, facilities, programs, services, activities and/or initiatives, including but not limited to any or all of the following, whether within or outside the Restricted Area (as defined in Section 9 of the Agreement):

- (i) Primary care clinics, urgent care clinics, indigent care programs or services, and mobile medical screening and primary care facilities or services, *but only to the extent that* any of the foregoing are established, organized and/or operated primarily for the purpose of ensuring or enhancing the delivery of care to the indigent, uninsured and/or underinsured. Such activities may include, without limitation, the Deaconess Women's Clinic, the East Central Community Center Clinic, and People's Clinic.
- (ii) Social service programs targeted at promoting the health, safety and welfare of children, and healthcare facilities, programs or services established, organized and/or operated primarily to address the health needs of children who may otherwise lack access to healthcare. Such activities may include, without limitation, child abuse assessment centers and school-based clinics.
- (iii) Organizations or programs having as their primary purpose the provision of education or training of health professionals.
- (iv) Organizations or programs having as their primary purpose the conduct, sponsorship, administration, coordination or facilitation of medical and public health research.
- (v) Organizations or programs having as their primary purpose the dissemination of health and wellness information to the general public.
- (vi) Any of the following:
  - Outpatient and residential substance abuse treatment facilities and programs;
  - Outpatient and residential behavioral health facilities and programs;
  - Residential care treatment facilities;
  - Facilities, services and programs addressing the physical, mental and social needs and well-being of seniors; and
  - Facilities, services and programs addressing the physical, mental and social needs and well-being of those with disabilities;*But only to the extent that* such facilities or programs do not compete with the Facilities.

- (vii) Organizations, facilities, programs, services, activities and/or initiatives not otherwise in conflict with the covenant set forth in Section 9 of the Agreement.

Notwithstanding the foregoing, the rights of Seller and/or its successors in interest (including without limitation the Foundation) with respect to the organizations, facilities, programs, services, activities and/or initiatives described in (i) through (vii) above shall not apply to the extent that such organizations, facilities, programs, services, activities and/or initiatives are owned, operated, controlled or managed by or as a part of the activities of a Competing System (as defined below). For purposes of this Schedule 9, the term "Competing System" shall mean any hospital or health system that materially competes with either or both of the Hospitals within the metropolitan Spokane area; for purposes of the foregoing, neither Shriners Hospital for Children-Spokane nor Sacred Heart Children's Hospital shall be deemed to materially compete with either or both of the Hospitals.

For the sake of clarification, neither Seller nor its successors in interest (including, without limitation, the Foundation) will be precluded from providing financial support to or on behalf of uninsured or underinsured individuals in order for such individuals to access health care services (including from a Competing System).

## Schedule 9

### Exceptions to Non-Compete

Notwithstanding the covenant not to compete set forth in Section 9 of this Agreement, and notwithstanding any other term, condition or provision of such Agreement, Seller and/or its successors in interest (including without limitation the Foundation) shall be permitted at any time and from time to time to, directly or indirectly, in whole or in part, own, lease, manage, operate, control, participate in, fund or otherwise support or facilitate organizations, facilities, programs, services, activities and/or initiatives, including but not limited to any or all of the following, whether within or outside the Restricted Area (as defined in Section 9 of the Agreement):

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